IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1113 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHWARBHAI MADHAVBHAI BHAGAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1113 of 1992

MR MR ANAND for Petitioner No. 1-5

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 26/06/2003

ORAL JUDGEMENT

The five petitioners, in paragraph 4 of this petition, have prayed for appropriate writ, direction or

order, directing the respondents authorities:

"(A) to consider the petitioners case for promotion to the posts in G.D.S. Class-II in the vacancies reserved for S.T. candidates.

(B) to permanently restrain the respondents from filling up the reserved vacancies for the post in G.D.S. Class-II by general class candidates.

(C) to promote the petitioners to the posts in G.D.S. Class-II and confer upon them the consequential benefits of pay, seniority, future promotions from the date the promotions are given to general class candidates on or after 18.2.1992."

2. It is the case of the petitioners that they are working on various Class-III posts which are part of a group and promotion from which is available to various posts in Gujarat Development Service (G.D.S.), Class-II. The petitioners are working in Bharuch District Panchayat. The first petitioner is working as Deputy Chitnis. Petitioners nos.2 and 3 are working as Extension Officer (Education); petitioner no.4 is working as Extension Officer (Agriculture) and petitioner no.5 is working as Extension Officer (Panchayat). According to the petitioners, the requirement for promotion to the post in G.D.S. Class-II is that, one must have at least seven years of experience in the lower cadre post and he must have passed Higher Standard Development Examination. According to the petitioners, they have more than seven years of experience on their present post which are immediately lower than the T.D.O's post and all the petitioners have passed Higher Standard Development Examination which is requisite for promotion to the post in G.D.S. Class-II. Thus, according to the petitioners, all of them are fully qualified and eligible for promotion to the higher post in G.D.S. Class-II. The petitioners are members of S.T. community. According to the petitioners, there is a backlog of carried forward vacancies reserved for S.T. candidates. The petitioners are the seniormost S.T. candidates and they are sought to be denied promotion to the higher post by a very simple devise of not showing their names in the seniority list. Therefore, it is the grievance of the petitioners that even though the Government issued mandatory directives to fill up the backlog of reserved posts by promoting persons belonging to the reserved category, the petitioners are denied this benefit as if they are not available for promotion, just because the authorities are not updating the seniority list.

3. This Court, on 19.2.1992 issued notice and granted ad-interim relief restraining the respondents from filling up the carried-forward, reserved posts for Scheduled Tribe candidates by general category candidates. On 31.3.1991, Rule has been issued in the matter and the ad-interim relief granted earlier to continue till further orders. Even though this Court fixed hearing of the matter on 16.6.1992, the matter is not heard and was simply adjourned as and when the same was listed for hearing. The respondents have not filed reply affidavit till the date.

4. Learned Counsel for the petitioners states that even though he addressed many letters to the petitioner, he has not received any instructions in the matter. Due to passage of time, it is reasonable to infer that the petitioners must have been promoted to the higher posts and therefore, they are not instructing the learned Counsel in prosecuting the matter. Same is the grievance of the learned AGP that the respondents have also not filed any reply till date. No useful purpose will be served in adjourning the matter to enable the respondents to file the reply.

5. Considering the facts and circumstances of the case, this petition can be disposed of by giving the following directions to the respondents:

If, for any reason, the promotion to the higher post is not given to the petitioners, the Additional Chief Secretary, Panchayat and Rural Housing Department, Govt. of Gujarat shall treat this petition as representation of the petitioners and after hearing the petitioners, take appropriate decision and shall communicate the same to the petitioners. Needless to say that, the decision adverse to the petitioners shall be subject to the challenge.

With the aforesaid observations and directions, the petition is allowed in part. Rule is made absolute to the above extent only. No order as to costs.

(Kshitij R. Vyas, J.)
Sreeram.